

IC 5-22-16

Chapter 16. Qualifications and Duties of Offerors and Prospective Contractors

IC 5-22-16-1

Responsibility of offeror; determination

Sec. 1. (a) If a purchasing agent determines that an offeror is not responsible, that determination must be made in writing by the purchasing agent.

(b) If an offeror fails to provide information required by the purchasing agent concerning a determination of whether the offeror is responsible, that offeror may not be considered responsible under this article.

(c) Information furnished by an offeror under this section shall not be disclosed outside the purchasing agency without the offeror's prior written consent.

(d) In determining whether an offeror is responsible, a purchasing agent may consider the following factors:

- (1) The ability and capacity of the offeror to provide the supplies or service.
- (2) The integrity, character, and reputation of the offeror.
- (3) The competency and experience of the offeror.

As added by P.L.49-1997, SEC.1.

IC 5-22-16-2

Responsiveness of offeror; determination

Sec. 2. In determining whether an offeror is responsive, a purchasing agent may consider the following factors:

- (1) Whether the offeror has submitted an offer that conforms in all material respects to the specifications.
- (2) Whether the offeror has submitted an offer that complies specifically with the solicitation and the instructions to offerors.
- (3) Whether the offeror has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.

As added by P.L.49-1997, SEC.1.

IC 5-22-16-3

Prequalified contractors

Sec. 3. Prospective contractors may be prequalified for particular types of supplies. Solicitation mailing lists of potential contractors may include any or all of such prequalified persons.

As added by P.L.49-1997, SEC.1.

IC 5-22-16-4

Registration with secretary of state; payment of gross retail tax; condition of doing business

Sec. 4. (a) An offeror that is a foreign corporation must be registered with the secretary of state to do business in Indiana in order to be considered responsible.

(b) This subsection applies to a purchase of supplies or services for a state agency under a contract entered into or purchase order sent to an offeror (in the absence of a contract) after June 30, 2003, including a purchase described in IC 5-22-8-2 or IC 5-22-8-3. A state agency may not purchase property or services from a person that is delinquent in the payment of amounts due from the person under IC 6-2.5 (gross retail and use tax) unless the person provides a statement from the department of state revenue that the person's delinquent tax liability:

- (1) has been satisfied; or
- (2) has been released under IC 6-8.1-8-2.

(c) The purchasing agent may award a contract to an offeror pending the offeror's registration with the secretary of state. If, in the judgment of the purchasing agent, the offeror has not registered within a reasonable period, the purchasing agent shall cancel the contract. An offeror has no cause of action based on the cancellation of a contract under this subsection.

As added by P.L.49-1997, SEC.1. Amended by P.L.254-2003, SEC.3; P.L.66-2004, SEC.5; P.L.246-2005, SEC.54.

IC 5-22-16-5

Evidence of financial responsibility

Sec. 5. (a) A purchasing agent may specify in a solicitation that an offeror must provide evidence of financial responsibility in order to be considered responsible. The evidence of financial responsibility may be a bond, certified check, or other evidence specified by the purchasing agent in the solicitation.

(b) An offeror must file evidence of financial responsibility in the amount, at the time, and as specified by the purchasing agent in the solicitation.

(c) If a bond or certified check is required as the evidence of financial responsibility, the amount of the bond or certified check may not be set at more than ten percent (10%) of the contract price. The bond, certified check, or other evidence of financial responsibility shall be made payable to the governmental body.

(d) This section does not preclude the use of a performance bond in addition to the bid bond, certified check, or other evidence of financial responsibility if the amount of the performance bond is stated in the solicitation.

(e) The check of an unsuccessful offeror shall be returned to the offeror by the purchasing agent upon selection of successful offerors. The check of a successful offeror shall be held until delivery or until completion of the contract.

As added by P.L.49-1997, SEC.1.

IC 5-22-16-6

Noncollusion affirmation

Sec. 6. (a) An offeror must file with the purchasing agent an affirmation, made under the penalties for perjury, that states in substance the following:

(1) The offeror has not entered into a combination or an agreement:

- (A) relative to the price to be offered by a person;
- (B) to prevent a person from making an offer; or
- (C) to induce a person to refrain from making an offer.

(2) The offeror's offer is made without reference to any other offer.

(b) The purchasing agent may require the affirmation to be made in the contract documents.

(c) The purchasing agent shall reject an offer that the purchasing agent finds to be collusive.

(d) If after the purchasing agent has awarded the contract, the purchasing agent discovers that the successful offeror's affirmation was false, the purchasing agent shall declare the contract forfeited and award a new contract.

(e) A person convicted of perjury for filing a false affirmation under this section may not be a party to a contract under this article for three (3) years following the date of conviction.

As added by P.L.49-1997, SEC.1.